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September 22, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
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SEP 22 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *In the Matter of Low-Volume Long-Distance Users, Notice of Inquiry,
CC Docket 99-249*

Dear Ms. Salas:

Enclosed for filing are the original and four (4) copies of Qwest Communications Corporation's Comments in the above-referenced proceeding.

Please acknowledge receipt of this filing by date stamping the enclosed copy included for this purpose. If you have any questions regarding this filing, please contact me at (703) 363-3131.

Sincerely,

Teresa K. Gaugler
Federal Regulatory Attorney

Enclosure

cc: ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Low-Volume Long-Distance Users)

CC Docket No. 99-249

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SEP 22 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

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September 22, 1999

TABLE OF CONTENTS

EXECUTIVE SUMMARY	III
INTRODUCTION.....	1
DISCUSSION	2
I. THE COMMISSION SHOULD FIRST IDENTIFY WHETHER FLAT-RATED CHARGES ARE IMPACTING LOW INCOME HOUSEHOLDS BEFORE CONSIDERING ADDITIONAL REGULATION.....	2
II. THERE IS NO LEGAL BASIS SEPARATE FROM PROMOTING UNIVERSAL SERVICE FOR THE COMMISSION TO EXAMINE IXCS' FLAT-RATED AND MINIMUM MONTHLY CHARGES.	5
III. THE COMMISSION SHOULD NOT REGULATE LONG DISTANCE CARRIERS' RATES BECAUSE CONSUMERS ARE ABLE TO CHOOSE AMONG HUNDREDS OF LONG DISTANCE SERVICE OFFERINGS.	7
IV. IXCS' RECOVERY OF FIXED COSTS THROUGH FLAT-RATE CHARGES AND MINIMUM MONTHLY CHARGES IS CONSISTENT WITH THE COMMISSION'S GUIDING PRINCIPLES IN THE ACCESS CHARGE REFORM PROCEEDING.	9
V. THE COMMISSION SHOULD FOCUS ON ENCOURAGING COMPETITION, NOT ON IMPOSING UNNECESSARY REGULATORY BURDENS ON NONDOMINANT CARRIERS IN THE COMPETITIVE LONG-DISTANCE MARKET.	14
VI. THE EXISTENCE OF FLAT-RATED CHARGES BY IXCS DOES NOT JUSTIFY ACCELERATING BELL COMPANY ENTRY INTO THE LONG DISTANCE MARKET.....	14
VII. THE COMMISSION SHOULD LIMIT ITS ROLE IN THIS AREA TO GOVERNMENT-CONDUCTED CONSUMER EDUCATION.....	16
CONCLUSION	18

EXECUTIVE SUMMARY

In this proceeding, the Commission asks whether the impact of flat fees on low-volume long-distance users justifies reregulation of long distance rates. Qwest recommends that the Commission carefully examine whether households that make few long distance calls do so because they cannot afford to make more calls, or whether other factors explain their low long distance usage. If the Commission concludes that low volume closely correlates with low income *and* if it finds that flat rate charges endanger present subscribership levels, the Commission should examine whether more targeted universal service modifications could address the problem, rather than reregulating long distance carriers, which comprise the most competitive market in telecommunications.

The Act contains several clear goals such as promoting local competition and preserving universal service. The apparent goal identified by the Commission in the *NOI* (avoiding the imposition of flat-rate charges by IXC's) while both worthy and desirable, simply does not constitute a legitimate basis for either direct or indirect reregulation of the highly competitive long distance industry. First, Qwest believes that the 1996 Act is producing benefits for millions of Americans today. Second, even if the Commission were to take a narrow view of this question and conclude that some consumers are not benefiting from the 1996 Act as a result of flat-rated charges, Qwest contends that the 1996 Act provides no legal support for the Commission to take steps to remedy this perceived shortcoming.

Consumers who do not wish to pay minimum usage charges imposed by their presubscribed IXC have other competitive options. As the Commission recognizes in the

NOI, these consumers may decline to select a presubscribed carrier and utilize “dial around” services to complete their long distance calls. In this competitive environment, it is fair and reasonable for the Commission to expect consumers to exercise their power to choose among the hundreds of long distance offerings if they are unhappy with their current service provider.

Qwest submits that imposing flat charges, such as minimum usage charges and the PICC, is the most economically rational way of recovering fixed costs. In its access charge reform proceeding, the Commission hailed the virtues of carriers recovering costs through the principle of cost-causation. IXC's incur fixed costs to establish and maintain a customer account whether or not the customer places a long distance call. Flat-rated charges allow IXC's to recover fixed costs directly from the cost causer rather than charging higher fees to other customers. If IXC's were unable to bill customers in this manner, they would be forced to recover fixed costs through their per-minute rates, which the Commission has found to harm consumers by artificially depressing long distance calling. Moreover, the Commission should not reinstate any system whereby high-volume consumers must pay higher rates in order to subsidize other consumers merely because the latter make fewer long distance calls.

Qwest believes the Commission can best serve all telecommunications users if it focuses its efforts on developing and enforcing policies aimed at promoting local competition and broadband deployment. Moreover, the existence of flat-rated charges by IXC's does not justify accelerating Bell company entry into the interLATA long distance market. Even if the Commission were to seriously consider making it easier for RBOCs to enter the long distance market in order to promote long distance competition, it is not

clear that the Commission is correct in assuming that an RBOC's existing billing and maintenance costs would permit it to avoid imposing certain flat-rated or minimum monthly charges. . Section 272 of the 1996 Act requires RBOC long distance affiliates to maintain separate operations from the RBOC local operations. Under this set of obligations, which mandate separate employees and facilities, it remains to be seen whether RBOCs would have meaningful cost savings of the sort envisioned by the Commission. Moreover, even if such billing and maintenance cost efficiencies exist, there is no reason to assume that RBOC long-distance affiliates would act any differently from other long distance carriers who have concluded that flat-rated charges and, in some cases, minimum monthly charges, are the best way to compete effectively in the long distance market. The best way for the Commission to ensure that *all* consumers reap the benefits of competition is for the Commission to focus its efforts on enforcing RBOC compliance with sections 251 and 271 prior to granting an RBOC application to provide in-region interLATA service.

Finally, the Commission should limit its role in this area to government-conducted consumer education. As long as a carrier's marketing material is accurate and not misleading, the Commission should not require that carrier to further educate its customers about alternative long distance services. While Qwest supports the efforts of regulators and consumer groups to inform consumers generally about the existence of competitive options, Qwest urges that any such education remain competitively neutral and not support any one carrier or service offering.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Low-Volume Long-Distance Users)	CC Docket No. 99-249
)	

INTRODUCTION

Qwest Communications Corporation ("Qwest") hereby submits its comments on the Federal Communication Commission's ("FCC's" or "Commission's") *Notice of Inquiry* in the above-referenced proceeding.¹

In this proceeding, the Commission asks whether the impact of flat fees on low-volume long-distance users justifies either direct or indirect regulation of the rates charged by long distance carriers. Qwest respectfully submits that there is no evidence the Commission could gather in this proceeding that would justify reregulating long distance carriers, which comprise the most competitive market in telecommunications. If the Commission concludes that low volume closely correlates with low income *and* if it finds that flat rate charges endanger present subscribership levels, the Commission should examine whether more targeted universal service modifications could address the problem. But if the Commission determines that low volume users do *not* correlate meaningfully with low income subscribers, then there is no basis for the Commission to

¹ *In the Matter of Low-Volume Long-Distance Users*, CC Docket No. 99-249, Notice of Inquiry (rel. July 20, 1999) (*NOI*).

consider further any action aimed at suppressing flat-rated charges or minimum monthly charges.

Absent a demonstrated risk to universal service, Qwest believes the Communications Act does not justify the reregulation of long distance rates in response to the appearance of flat rate charges on long distance telephone bills. Therefore, regardless of the evidence submitted in response to the *NOI*, Qwest urges the Commission to abandon any suggestion that it may reregulate the highly competitive long distance market. Instead, Qwest encourages the Commission to focus its limited resources on taking actions to promote local competition and broadband deployment.

DISCUSSION

I. THE COMMISSION SHOULD FIRST IDENTIFY WHETHER FLAT-RATED CHARGES ARE IMPACTING LOW INCOME HOUSEHOLDS BEFORE CONSIDERING ADDITIONAL REGULATION.

The Commission should begin its inquiry by examining the threshold question of whether low volume customers correlate to a meaningful degree with low income customers. Although the term “low volume” is used interchangeably with “low income,” Commissioner Powell’s statement accompanying the *NOI* exposed the analytical deficiencies of merely assuming the two terms are synonymous or even linked in any meaningful way.² Qwest recommends that the Commission carefully examine whether

² Commissioner Powell suggested a number of plausible reasons other than income that could cause a household to make few long distance calls. For instance, a wealthy household might make few long distance calls because their families live locally. *Id.* (Statement of Commissioner Michael K. Powell, Concurring).

households that make few long distance calls do so because they cannot afford to make more calls, or whether other factors explain their low long distance usage.

In examining the relationship between income and long distance calling volume, the Commission could reach one of two conclusions. The first possible conclusion is that low income levels and low calling volume correlate in a meaningful way. If the Commission makes such a finding, it may be appropriate for the Commission to then inquire as to the effect, if any, of flat-rated charges on this group of low volume/low income consumers. Studying the relationship between new long distance rate structures and telephone subscribership would be within the Commission's purview because the Telecommunications Act of 1996 set a clear national policy objective of preserving and advancing universal service.³

If the Commission's inquiry were to find that low volume/low income customers are discontinuing telephone service because of flat-rated charges, the Commission should look closely at the mechanisms it has already established for promoting universal service among low income households – Lifeline, Linkup, and Low Income programs – and evaluate whether they can be modified so as to reverse the loss of telephone customers. The Lifeline, Link Up, and Low Income programs were developed for the express purpose of promoting universal service among low-income households. Qwest believes the Commission should focus on using those programs to resolve a demonstrated impact of flat-rated charges on universal service. By contrast, reregulation of long distance rates or rate structures to improve low income subscribership would be a grossly overbroad

³ 47 U.S.C. § 254.

method of addressing an exceedingly narrow problem and would also run counter to the Commission's critical objective of promoting competition through a rational pricing system.

The Commission already has the information it needs to determine whether flat-rated charges are affecting subscribership among low volume/low income subscribers. The Commission's most recent report on telephone subscribership levels indicates that there has been no meaningful reduction in telephone penetration among the lowest income households since passage of the 1996 Act. Specifically, telephone subscribership among these households with an annual income of \$5,000 or less was 75.6 percent in 1996 compared with 75.9 percent in March 1999.⁴ Thus, the Commission's own reports demonstrate that flat-rate charges have had no impact on telephone subscribership among lowest income households. As a result, Qwest believes the Commission cannot justify reregulating long distance rates on the basis of "promoting universal service."

The second possible conclusion the Commission might reach is that there is no meaningful correlation between income levels and usage of long distance service. *If that is the case, Qwest strongly encourages the Commission to terminate this proceeding.* As discussed below, Qwest believes that, absent some legitimate concern about universal service, the 1996 Act does not authorize the Commission to conduct a proceeding aimed at limiting the manner in which long distance carriers charge customers for service.

⁴ Alexander Belinfante, *Telephone Subscribership in the United States*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 4 (rel. May 7, 1999).

II. THERE IS NO LEGAL BASIS SEPARATE FROM PROMOTING UNIVERSAL SERVICE FOR THE COMMISSION TO EXAMINE IXCS' FLAT-RATED AND MINIMUM MONTHLY CHARGES.

Separate from the policy objective of promoting universal service, the *NOI* indicates that there is another policy objective that could be advanced by reregulating long distance rates---that all consumers must receive an immediate benefit from the 1996 Act in the form of lower-priced long distance service. Evaluating consumer benefits from the 1996 Act in this way is both too narrow and too focused on the short term. Moreover, unlike the explicit universal service policies in the 1996 Act, Qwest believes this second policy goal finds no support in the 1996 Act.

First, Qwest believes that the 1996 Act is producing benefits for millions of Americans today. To cite just one example, the Commission's decision in the Local Competition proceeding to make commercial mobile radio service (CMRS) carriers eligible for reciprocal compensation drastically reduced the interconnection fees paid by CMRS carriers. As a result, CMRS rates have plunged, and wireless telephone subscribership has soared. In its *Third Report to Congress*, the Commission found that 44 million people subscribed to mobile service by the end of 1996.⁵ That number increased to 55 million by year-end 1997, and to 68 million by year-end 1998.⁶

⁵ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 13 FCC Rcd 19746, 19763 (rel. June 11, 1998).

⁶ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 1999 FCC LEXIS 2979 at 13 (rel. June 24, 1999).

In addition, and most significantly, the 1996 Act has set the industry on a course toward robust competition in the local telephone and advanced services markets. There is no doubt that the benefits of competition and choice in these markets will dwarf the significance of line item charges for all consumers. Competition will provide customers with lower-priced basic phone service and a greater array of telecommunications-based products , such as broadband Internet access, than would have existed without passage of the 1996 Act. Consequently, Qwest urges the Commission to take a broad view of the “benefits” that are flowing, and will flow in the future, when it considers whether most consumers are sharing in the fruits of the 1996 Act.

Second, even if the Commission were to take a narrow view of this question and conclude that some consumers are not benefiting from the 1996 Act as a result of flat-rated charges, Qwest contends that the 1996 Act provides no legal support for the Commission to take steps to remedy this perceived shortcoming. The Act contains several clear goals such as promoting local competition and preserving universal service. The apparent goal identified by the Commission in the *NOI* (avoiding the imposition of flat-rate charges by IXC's) while both worthy and desirable, simply does not constitute a legitimate basis for either direct or indirect reregulation of the highly competitive long distance industry.

In contrast to the objectives of local competition and universal service detailed in the 1996 Act, the Act lacks any specific reference that could be read to justify reregulation of the long distance market. In fact, the Act specifically states that its

purpose is to *deregulate* telecommunications. The Commission regularly recites the Act's deregulatory goal in its decisions implementing the 1996 Act.⁷ In light of the Commission's findings that no carrier possesses market power in the long distance market,⁸ it is difficult to see how an increase in regulation of the long distance market could be reconciled with the Act's deregulatory emphasis.

III. THE COMMISSION SHOULD NOT REGULATE LONG DISTANCE CARRIERS' RATES BECAUSE CONSUMERS ARE ABLE TO CHOOSE AMONG HUNDREDS OF LONG DISTANCE SERVICE OFFERINGS.

Even if some consumers have thus far experienced higher overall telephone bills than prior to the Act, that may be attributable to the decision by those consumers not to take advantage of competitive alternatives in the long distance market. Fierce competition among IXCs has resulted in a myriad of service options for low volume customers, and the process for consumers to take advantage of these choices could not be easier. All a

⁷ See, e.g., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 (1996); *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998); *In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5361 (1997).

⁸ *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities and Authorizations Therefor*, CC Docket No. 79-252, Fourth Report and Order, 95 FCC.2d 554 (1983) (declaring all long distance carriers other than AT&T to be nondominant); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1996) (declaring AT&T to be nondominant).

customer has to do is make a single phone call to switch long distance carriers. Typically the customer's new long distance carrier will relieve the customer of paying the PIC change fee imposed by the local phone company for changing long distance carriers. In this environment, it is fair and reasonable for the Commission to expect consumers to exercise their power to choose among the hundreds of long distance offerings if they are unhappy with their current service provider.

Consumers who do not wish to pay minimum usage charges imposed by their presubscribed IXC have other competitive options. As the Commission recognizes in the *NOI*, these consumers may decline to select a presubscribed carrier and utilize "dial around" services to complete their long distance calls.⁹ Consumers need not look far to find advertising for "dial around" services with competitive rates often lower than those of the major IXC's basic calling plans. Competitive forces have provided such "dial around" options for consumers, and carriers will continue to provide innovative alternatives as long as the Commission does not intervene with heavy-handed rate regulation. Thus, there is no need for the Commission to take special measures to protect low-volume users because these consumers already have alternative sources of long distance service.

⁹ *NOI* ¶ 16.

IV. IXCS' RECOVERY OF FIXED COSTS THROUGH FLAT-RATE CHARGES AND MINIMUM MONTHLY CHARGES IS CONSISTENT WITH THE COMMISSION'S GUIDING PRINCIPLES IN THE ACCESS CHARGE REFORM PROCEEDING.

The Commission recognizes that its former access charge regime implicitly subsidized low-volume long distance users. The goal of the Commission's access charge reform proceeding was to move toward a system of cost-based access charges in order to maximize overall consumer welfare. It is indisputable that excessive access charges harm consumers by keeping long distance rates artificially high and suppressing usage of long distance service. The Commission itself has stated that "implicit subsidies have a disruptive effect on competition, impeding the efficient development of competition in both the local and long-distance markets."¹⁰

Although the *NOI* reaffirms the Commission's intention to "reduce the support burden on high-volume long-distance and business customers;"¹¹ the Commission must recognize that reducing the subsidy paid by these customers will naturally affect the costs of those once subsidized— low-volume users. The Commission should not expect carriers to incur financial losses to provide service to those customers, especially if those customers are not in financial need. Thus, although these low-volume customers may "share the benefits of a rational rate structure" resulting from access charge reform,¹² they must also share the burden of paying for costs they cause.

¹⁰ *Id.* ¶ 6.

¹¹ *Id.* ¶ 13.

¹² *Id.*

The Commission seeks comment on whether imposing flat charges on low-volume consumers is appropriate.¹³ Qwest submits that imposing flat charges, such as minimum usage charges and the PICC, is the most economically rational way of recovering fixed costs. In its access charge reform proceeding, the Commission hailed the virtues of carriers recovering costs through the principle of cost-causation.¹⁴ Specifically, the Commission found that “[r]estructuring rates [for access charges] to reflect more accurately cost-causation [would] promote competition, reduce per-minute charges, stimulate long-distance usage, and improve the overall efficiency of the rate structure.”¹⁵ Furthermore, in this *NOI*, the Commission acknowledges that “[u]nder the principles of cost-causation, it is most economically efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them.”¹⁶ It is no less efficient for IXC’s to recover their costs in the same manner that they incur them.

IXC’s incur fixed costs to establish and maintain a customer account whether or not the customer places a long distance call. When a customer presubscribes to an IXC, the customer receives a service from that carrier—the ability to use “1+” dialing for long distance calls—and IXC’s incur fixed costs for that account. For example, Qwest incurs costs to mail informational material to its subscribers; acquire and maintain the facilities

¹³ *Id.*

¹⁴ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997), *aff’d sub nom.* Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523 (8th Cir. 1998) (*Access Charge Reform Order*).

¹⁵ *Id.* at 16038.

¹⁶ *NOI* ¶ 5.

and personnel needed to provide customer service; send monthly bills to customers; and process payments received from customers.

Qwest incurs a fixed monthly cost of between \$2.50 and \$3.00 per subscriber account even if the customer makes no long distance calls in a month. Recovering these costs through flat fees and minimum monthly charges is not only the most economically rational approach for Qwest and other IXC's, it is also entirely consistent with the principle of cost-causation favored by the Commission in its Access Charge Reform proceeding. That is, flat-rated charges allow IXC's to recover fixed costs directly from the cost causer rather than charging higher fees to other customers. If IXC's were unable to bill customers in this manner, they would be forced to recover fixed costs through their per-minute rates, which the Commission has found to harm consumers by artificially depressing long distance calling.¹⁷

When IXC's incurred all costs of access through per-minute charges from the LECs, they passed those charges through to their customers in the form of per-minute charges.¹⁸ However, the Commission now seems surprised that as IXC's incur a portion of their access costs through the flat-rated PICC for each presubscribed customer, they are passing that charge through to the customer in the form of a flat fee. Nonetheless, such recovery conforms to the very principles of cost-causation embraced by the Commission in its Access Charge Reform proceeding.¹⁹ Consequently, requiring or pressuring IXC's into rolling flat-rated charges into their per-minute rate structure would

¹⁷ *Access Charge Reform Order*, 12 FCC Rcd at 15995-96.

¹⁸ *NOI* ¶ 12.

¹⁹ *Id.* ¶ 10.

be directly contrary to the consumer welfare principles espoused by the Commission when it reformed the access charge system.

The Commission acknowledges that in its Access Charge Reform proceeding it did not prohibit IXC's from using pass-through charges to recover their PICC costs.²⁰ In the *NOI*, however, the Commission suggests that it now may consider prohibiting IXC's and LEC's from recovering those charges through flat charges.²¹ Qwest believes it would be contrary to the intent of the 1996 Act to regulate nondominant carriers' rates and cost recovery mechanisms in a competitive market. Furthermore, the Commission should not prohibit carriers from recovering the PICC charge on a flat-rate basis because it is incurred by IXC's as a flat fee for non-usage based costs.

Qwest strongly supports the Commission's proposals to require LEC's to directly bill the residential PICC and universal service contribution to their end users.²² The PICC is a cost that telephone subscribers cause *local* telephone companies to incur so that subscribers can originate and terminate long distance calls. It is not a cost imposed by consumers on the networks of IXC's. Furthermore, the Commission's rules already allow LEC's to recover the PICC directly from end users who do not presubscribe to an IXC,²³ which is further evidence that the PICC is not a cost directly related to an end user presubscribing to or utilizing an IXC's services. Similarly, a LEC's universal service contributions are unrelated to services provided by IXC's. LEC's must contribute based on end user revenues, not revenues received from IXC's. Therefore, LEC's should not

²⁰ *Id.* ¶ 12.

²¹ *Id.* ¶ 19(g).

²² *Id.* ¶ 18.

recover their contribution costs from IXC's, but should recover those costs from the cost-causers—their end users.

In the NOI, the Commission explains that its goal “is to bring to all Americans the benefits of a robust and competitive communications marketplace. Since passage of the Act, competition has created greater choice and value for many consumers.”²⁴ As the Commission acknowledges, competition continues to bring long distance alternatives to consumers as they have the opportunity to select from a myriad of carriers for their presubscribed service or to use “dial around” services in lieu of a presubscribed carrier. The Commission should not stymie this robust competition by regulating nondominant long distance carriers’ rate plans. The Commission’s expressed goal is to ensure that consumers reap the benefits of competition. Unlike the era of monopoly regulation, the Commission’s goal is not to provide consumers with guaranteed low rates subsidized by other consumers. Moreover, the Commission should not reinstate any system whereby high-volume consumers must pay higher rates in order to subsidize other consumers merely because the latter make fewer long distance calls.

Qwest agrees with the Commission that government intervention would be at odds with the deregulatory emphasis of the Act and strongly urges the Commission not to retreat from its own deregulatory policies.²⁵ Because nondominant carriers are unable to exert market power, there is no need for the Commission to intervene and regulate their calling plans and rates.

²³ 47 C.F.R. § 69.153(b).

²⁴ *NOI* ¶ 11.

²⁵ *Id.* ¶ 18.

V. THE COMMISSION SHOULD FOCUS ON ENCOURAGING COMPETITION, NOT ON IMPOSING UNNECESSARY REGULATORY BURDENS ON NONDOMINANT CARRIERS IN THE COMPETITIVE LONG-DISTANCE MARKET.

Qwest believes the Commission can best serve all telecommunications users if it focuses its efforts on developing and enforcing policies aimed at promoting local competition and broadband deployment. Consumers today experience reduced choice and innovation in the local telephone and broadband markets because incumbent local telephone companies have less incentive to compete aggressively for customers than do carriers in the long distance market. Over the past three years, the Commission has taken aggressive steps to promote competition in the local market. Those actions have begun to pay dividends for many customers, but that undertaking is still in its early stages. Qwest firmly believes that the Commission can deliver far more value to millions of consumers if it uses its limited resources to help accelerate the development of local competition rather than micromanaging cost recovery in the highly competitive long distance market.

VI. THE EXISTENCE OF FLAT-RATED CHARGES BY IXCS DOES NOT JUSTIFY ACCELERATING BELL COMPANY ENTRY INTO THE LONG DISTANCE MARKET.

The Commission suggests that low-volume users will benefit from Regional Bell Operating Company (RBOC) entry into the in-region interLATA market and requests comment on whether it should modify its rules to ensure such a benefit.²⁶ Paragraph 17 of the *NOI* seems to imply that the Commission would consider lowering the bar for

RBOCs to obtain 271 approval in order to address concerns about flat-rated charges or minimum monthly charges through greater long distance competition. To the extent that is a correct reading of paragraph 17, it is difficult to see how the Commission could seriously entertain the possibility of sacrificing the enormous and indisputable benefits of fully opened local markets to pursue the questionable and comparatively insignificant goal of using RBOC long distance entry to discipline the rate structures of existing long distance carriers. The Commission has already made clear its view that whatever benefits may flow from RBOC entry into long distance are not nearly as important to consumer welfare as fully opened and competitive local markets.²⁷

Even if the Commission were to seriously consider making it easier for RBOCs to enter the long distance market in order to promote long distance competition, it is not clear that the Commission is correct in assuming that an RBOC's existing billing and maintenance costs would permit it to avoid imposing certain flat-rated or minimum monthly charges. Section 272 of the 1996 Act requires RBOC long distance affiliates to maintain separate operations from the RBOC local operations.²⁸ Under this set of obligations, which mandate separate employees and facilities, it remains to be seen

²⁶ *Id.* ¶ 17.

²⁷ See *In the Matter of AT&T CORPORATION, et al., Complainants, v. AMERITECH CORPORATION, Defendant, and QWEST COMMUNICATIONS CORPORATION, Defendant-Intervenor; AT&T CORPORATION, et al., Complainants, v. U S WEST COMMUNICATIONS, INC., Defendant, and QWEST COMMUNICATIONS CORPORATION, Defendant-Intervenor*, Memorandum Opinion and Order, 13 FCC Rcd 21438, 21443 (rel. October 7, 1998) ("Congress chose to forego whatever short term benefits might result from immediate BOC entry into long distance, and instead decided to use the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition.")

²⁸ 47 U.S.C. § 272

whether RBOCs would have meaningful cost savings of the sort envisioned by the Commission. Moreover, even if such billing and maintenance cost efficiencies exist, there is no reason to assume that RBOC long-distance affiliates would act any differently from other long distance carries who have concluded that flat-rated charges and, in some cases, minimum monthly charges, are the best way to compete effectively in the long distance market.

The best way for the Commission to ensure that *all* consumers reap the benefits of competition is for the Commission to focus its efforts on enforcing RBOC compliance with sections 251 and 271 prior to granting an RBOC application to provide in-region interLATA service. The Commission should not modify any of its policies regarding implementation of Section 271 based on the highly questionable assumption that RBOC interLATA entry would benefit low-volume users to a greater extent than would continuation of existing policies aimed at promoting local competition.

VII. THE COMMISSION SHOULD LIMIT ITS ROLE IN THIS AREA TO GOVERNMENT-CONDUCTED CONSUMER EDUCATION.

The Commission also suggests that lowering off-peak access charges may address its concerns regarding the impact on low-volume users because IXC's could then lower their rates during the off-peak periods. The only way that plan could be enforced is if the Commission: (1) monitors each IXC's flow-through of access reductions (which the Commission appears to have recognized is extraordinarily contentious, time consuming and ultimately of limited value); and (2) is willing and able to enforce the flow-through requirement by rejecting IXC's' tariffs containing rate structures that do not correctly flow

through access reductions. Such heavy-handed rate regulation of long distance service would be anachronistic in today's extremely competitive long distance market.

Moreover, market events appear to be overtaking the Commission's interest in having IXC's reduce off-peak access charges. Many of the largest IXC's have recently initiated rate reductions for "off-peak" time periods. It is hard to see how the Commission could look at these market developments and conclude that it should nonetheless attempt to manage IXC's' off-peak pricing.

The Commission also seeks comment on whether it should require carriers to include billing inserts aimed at educating customers on competitive alternatives in the long distance markets. Carriers already expend enormous resources to market their own services to consumers and would incur significant additional costs to include such billing inserts with no benefit to that carrier. Moreover, such billing information would likely be confusing to consumers who may question its authenticity and purpose given that its purpose is to encourage the customer to consider using another carrier. As long as a carrier's marketing material is accurate and not misleading, the Commission should not require that carrier to further educate its customers about alternative long distance services. Furthermore, no carrier should be responsible for marketing other carriers' services.

The most constructive role the Commission could play in response to the appearance of flat-rated charges and minimum monthly charges is to undertake consumer education. The *NOI* suggests that the Commission, state agencies, and consumer groups could minimize the impact on low-volume users and eliminate the need for regulation by

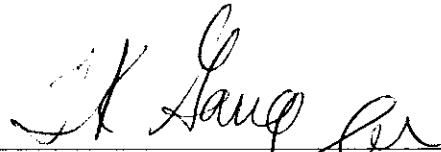
educating such users on their competitive options.²⁹ While Qwest supports the efforts of regulators and consumer groups to inform consumers generally about the existence of competitive options, Qwest urges that any such education remain competitively neutral and not support any one carrier or service offering.

CONCLUSION

For the reasons stated above, the Commission should not consider rate regulation of nondominant long-distance carriers unless it first determines that low-volume users are also low-income users in need of subsidization. The Commission should permit, if not encourage, carriers to impose flat charges to recover fixed costs because such recovery satisfies the principles of cost-causation. Finally, Qwest urges the Commission to focus its limited resources on policies to encourage competition rather than on imposing unnecessary regulatory burdens on competitive carriers.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION



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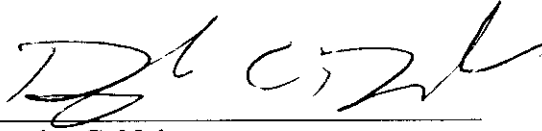
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September 22, 1999

²⁹ NOI ¶ 18.

CERTIFICATE OF SERVICE

I, Douglas C. Nelson, hereby certify that on this twenty-second day of September, 1999, a copy of the foregoing Comment of Qwest Communications Corp. was served on the parties listed below via hand delivery.



Douglas C. Nelson

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